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SUBJECT: ASSESSING LABOR AFTER ONE YEAR OF CAFTA-DR:
IMPLEMENTATION AND COMPLIANCE OF KEY LABOR LAWS

REF: A. SANTO DOMINGO 151

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[C](#). 07 SANTO DOMINGO 1119

[1](#)1. Summary: In a series of meetings with labor unions, NGOs and officials from the Ministry of Labor (SET), our contacts highlighted some of the successes and continuing problems in labor rights since the entry-into-force of CAFTA-DR in the Dominican Republic in March 2007. Positive improvements include some mitigation of instances of child labor, progress in collective bargaining negotiations with a major textile firm, and the near completion of a key regional project. Despite this progress, more needs to be done in areas such as written labor contracts, salary equity and pay deductions, improving workplace health and safety, eliminating child labor, reducing gender and discrimination issues, promoting and encouraging freedom of association, and improving the quality of work inspections.

Progress made

[1](#)2. The ongoing implementation of two programs to combat child labor has been an important success since the entry-into-force of CAFTA-DR. In January 2008, the U.S. Department of Labor launched the second phase of a public-private partnership project to combat child labor through education, known as "Spaces to Grow." (Ref A) The project aims to remove from exploitive labor conditions, or prevent from entering the child labor force, 10,000 children in four regions of the Dominican Republic. The first phase successfully removed and/or prevented 27,000 children from entering the child labor force. The International Labor Organization) International Program on the Elimination of Child Labor (ILO-IPEC), in partnership with World Vision, also launched the second phase of their child labor eradication program. This project, which focuses on the southern regions of Azua, San Juan, Bahoruco, Barahona, and Independencia, aims to remove and prevent 25,200 children from working and entering the child labor force.

[1](#)3. Progress has also been made in resolving a thorny labor dispute within the textile industry over the past year. After months of acrimony between labor and management at TOS Dominicana, a factory owned by Hanesbrands (Ref B), the SET stepped in -- encouraged by Embassy advocacy -- and sent a special commission to determine whether the union had a majority. The Commission declared that the United Union of TOS Dominicana workers met all the requirements to enter into collective bargaining. Hanesbrands initially challenged the SET decision, but later entered into collective bargaining with the union and the two sides have made significant progress toward a contract. Negotiations resumed in April to address the remaining issues of pay periods, contracts, and

overtime pay. Though Cathy Feingold of the Solidarity Center was confident that the union and Hanesbrands would come to an agreement soon, she is concerned about general issues that underscore the limitations of collective bargaining in the country. (See paragraph 15 below.)

¶4. A third achievement in labor affairs has been "Comply and Win," a regional CAFTA-DR program promoting worker rights education; strengthening inspection, compliance, and alternative conflict resolution; and promoting and protecting labor rights for women. The project is now close to being fully implemented. During a recent region-wide conference, as well as in a meeting with PolOff, "Comply and Win" director Rodolfo Piza highlighted the dissemination of worker's rights information. This is done via three channels: The website www.leylaboral.com, flyers and pamphlets, and public service announcements by radio. Each channel targets specific audiences depending on their role and experience in labor, access to communication channels, and education and literacy level. Piza also added that "Comply and Win" has assisted in training SET labor inspectors and mediators. He emphasized that the number of inspections in the DR is the highest of any CAFTA-DR country. During the inspection process, Piza noted that inspectors investigating labor code violations may also informally arbitrate and mediate to rectify the labor violation. "Comply and Win" promotes labor rights for women by giving workshops on gender issues and discrimination.

¶5. In addition to "Spaces to Grow" and "Comply and Win," there are several other USG-funded labor rights projects underway in the Dominican Republic, including a labor rights information dissemination program in specific sectors in

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agriculture in Mao Valverde, and a labor and legal rights center in Santiago with a target audience of, though not exclusive to, domestic, migrant, and free trade zone workers. Since these programs were initiated only recently, they will be discussed in future Embassy reporting.

Areas for improvement

¶6. Despite the progress made in several areas of the labor sector since the entry-into-force of CAFTA-DR, other more problematic issues point to the long-term nature of improving labor rights in the Dominican Republic.

--Contracts, salary equity and deductions

¶7. The Dominican Labor Code allows for both written and verbal contracts with a provision that "either party can demand that a verbal contract be formally put into writing." NGOs allege that the lack of written work contracts make workers more vulnerable to exploitation; for example, paid less, and classified as day laborers (Ref C). Poloff spoke with Fernando Ferran, the director of Institutional Relations for the Sugar Consortium of Industrial Companies (CAEI), owned by the Vicini family. Ferran emphasized that although sugar cane workers for CAEI do not have written contracts, the Dominican labor code allows them full protection of their rights after three months of employment. CAEI sugar cane workers may use their pay stubs to prove that they have been employed for the required amount of time. NGOs also allege that employers in construction do not provide written contracts. Washington Gonzalez, General Director of Labor of the SET, acknowledged that most workers in agriculture and construction rarely get written work contracts; however, he also noted that a verbal contract usually allows a worker to still file claims for labor violations. Anina Del Castillo, a Vice-Minister at SET, added that any worker, even undocumented immigrants, may file a claim. She also stated that those with an outstanding and open claim cannot be

deported. When informed of Del Castillo's statements on this issue, Cathy Feingold of the Solidarity Center seemed genuinely surprised, adding that the Solidarity Center plans to verify the veracity of the SET's statements.

¶18. Payroll deductions continue to be an issue with most workers. According to the Dominican labor code, employers are allowed to make deductions for, among other things, worker contributions to a pension plan (Ref C). However, NGOs allege that most migrant workers, especially those with no documentation, almost never receive their benefits. CEDAIL, an NGO, is in the process of assisting sugar cane workers to claim pension benefits they contributed via social security deductions. During a site visit by EmbOffs, CAEI officials showed a pay stub that indicated deductions for social security and stated that workers who paid into the system should be able to claim pension benefits; however, CAEI officials did not comment on NGO allegations of workers not being able to access social security pension benefits.

--Workplace health and safety

¶19. Gonzalez told PolOff that although labor inspectors check for health and safety violations, there are limited health and safety measures implemented in the workplace and employers often were unaware of proper standards in this area. Gonzalez stated employers in construction were often reluctant to provide safety gear such as hard hats, harnesses, or safety warning signs as it would increase their costs. In several construction sites throughout the country, PolOff observed many construction workers at work without hard-hats, reflective clothing, harnesses or adequate protective gear. Reports indicate that workers in agriculture also lack appropriate safety equipment, proper bathroom facilities, and proper information on handling of hazardous materials.

--Child Labor

¶10. Although Gonzalez told PolOff on several occasions that child labor no longer exists in the sugar industry, as confirmed by regular SET labor inspections, Del Castillo mentioned that child labor remains an issue in garlic, tomato, and coffee production in Constanza, Azua, and San Jose de Ocoa, respectively (Septel). Ferran unequivocally told PolOff that there is no longer any child labor in CAEI

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facilities. However, NGOs and certain individuals close to the issue deny that child labor has been completely eliminated in the sugar industry. Gonzalez stated that while there are labor inspection programs throughout the country, including in Azua and Constanza, he reported that these efforts have been insufficient in discouraging producers from using child labor.

--Discrimination

¶11. Although the SET, through the "Comply and Win" program, has a program educating employers on gender discrimination, issues of gender discrimination, including salary inequity and pregnancy exams, are still widespread in various sectors. While the practice of requiring a medical exam is allowed, often the exams would include a pregnancy test that employers sometimes used to exclude women. (Note: The Dominican labor code provides for no less than 12 weeks of pre and post natal care. End Note)

¶12. The SET has an Office of Gender Issues; however, it does not have an office that addresses discrimination based on national origin, race or age. According to Del Castillo, there is no discrimination in the country, mirroring the official position of the GODR which is believed by few. Del Castillo argued that issues perceived by others to be

"discrimination" against migrant workers are simply issues of health, safety, and salary inequity.

¶13. Although there are many supporters for a guest-worker plan that would regularize the status of migrant workers, strong opposition from nationalist politicians has stymied progress. Regularizing the status of migrant workers would improve their access to legal protections and facilitate union organization, among other benefits. Gonzalez publicly called for the regularization of the status of undocumented workers during a conference for "Comply and Win." He also told PolOff privately that regularization is also supported by other officials such as the Minister of Health. Ferran also mentioned to PolOff that CAEI's official position is some form of amnesty to regularize the status of undocumented migrant Haitian workers in the country.

--Labor inspections

¶14. NGOs continue to allege incidents where employers facilitate deporting workers, especially in construction, on payday so that salaries do not have to be paid. Juan Tomas Hernandez, the president of the Union of Engineers, Architects, and Surveyors (CODIA), stated that although it was not improbable that certain employers or construction firms engage in this practice, he does not know any construction firms who are members of CODIA who engage in this practice. Although Gonzalez stated that more labor inspectors and diffusion of worker's rights have resulted in reducing the occurrence of this practice last year, NGOs allege that this practice continues unabated. (Note: When asked about specific examples of this type of labor violation, NGOs were unable to provide specific details. End Note). Gonzalez affirmed that labor code violation cases brought against employers, especially in construction, have risen in the past year. In most of these cases, Gonzalez mentioned the SET often rules in favor of the workers. He claimed that he is even beginning to hear complaints from employers complaining of the increase in worker claims against them.

--Freedom of Association

¶15. Feingold stated that while there were gains in promoting freedom of association, the process to unionize and or pursue collective bargaining is fraught with onerous bureaucratic and economic hurdles that often discourage workers from organizing and pursuing collective bargaining. In the case of TOS Dominicana, Feingold stated that Hanesbrands tactics belied their bona fide interest in allowing the union to reach an agreement. One example, she argued, is Hanesbrands challenging the SET's decision verifying the union has met minimum requirements for collective bargaining. In addition, the union workers often had to bear operational expenses to pursue collective bargaining. Feingold's examples included: Hanesbrands would not pay union workers when they were engaged in collective bargaining during their scheduled workday; union workers also had to pay for transportation to and from collective bargaining sites and other incidental

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fees; and union workers had to pay legal fees up front (labor lawyers, often poorly remunerated, cannot afford to take cases without upfront compensation). Often these incidental and bureaucratic costs were prohibitive for workers to pursue unionizing or collective bargaining.

¶16. Feingold believes programs such as "Comply and Win" have done their fair share in educating workers of their rights and of the law. In addition, the increase of SET inspections has slowly started promoting a culture of compliance. However, Feingold believes that to further improve labor conditions in the country, especially in freedom of association and collective bargaining, regional legal or

labor centers staffed with lawyers or labor advocates
designed to assist workers on managing the bureaucracy of the
SET should be established.

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